IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1166 of 2001
with
SPECIAL CIVIL APPLICATION No 1168 of 2001
with
SPECIAL CIVIL APPLICATION No 1170 of 2001
with
SPECIAL CIVIL APPLICATION No 9969 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DHANABHAI AMARSHIBHAI
Versus
STATE OF GUJARAT

Appearance:
MR MD VAKIL for Petitioners
MR RC KODEKAR AGP for Respondent No. 1-2
MR MM TIRMIZI for Respondent No. 3

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE SHARAD D.DAVE

Date of decision: 18/09/2001

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.C. PATEL)

#. This group of Special Civil Applications is filed inter alia praying to direct the respondents to pay amount of rent/interest at a prescribed rate of interest at 9% per annum for the first year from the date of taking possession (i.e. 1.4.1987) and interest at the rate of 15% per annum thereafter till the amount is paid on the amount of compensation as awarded by the Special Land Acquisition Officer in his award dated 3.4.2000 made under Sec. 11 of the Land Acquisition Act, 1894 (hereinafter to be referred to as "the Act").

#. Facts are taken from Special Civil Application No. 1166/2001. In Land Acquisition Case No. 34/96 lands situated at village Kuvar, Taluka Sanand, Dist. Ahmedabad were acquired and the market price was determined at the rate of Rs. 9/- per sq. mt. For acquisition of lands covered under Land Acquisition Case No. 34 of 1996, a notification was published under Section 4 of the Act on 7th April, 1997 and the Award was made under Section 11 of the Act on 3.4.2000. In other cases, notifications were published on 14.3.97, however, possession was handed over much prior to issuance of notification under Section 4 of the Act in all these cases. Therefore, all the matters are taken together.

#. Learned advocate appearing for the petitioner drew our attention to para 13 of the award which refers to notification under Section 4 of the Act gazzeted on 21.3.1997 (published on 7.4.1997). The possession was taken on 1.4.87 by private arrangements. It is in view of this, the Land Acquisition Officer held that from April 1997 to April, 2000 for 33 months, additional interest should be paid. In para 14 of the award, it is further observed that possession of the land is taken by acquiring body directly by making arrangement with private parties and therefore, either as per the condition of the agreement, rent or interest is required to be paid directly by the acquiring body.

#. Learned advocate for the petitioner submitted that section 34 of the Act clearly mandates payment of interest and therefore, it is the bounden duty of the acquiring body or the State to pay interest as mentioned in Section 34 of the Act. The said Section reads as under.

"34. Payment of interest. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited:

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such."

Section 34 is in Part V of the Act, 1894 which refers to payment. Section 31 refers to payment of compensation or deposit of the same in the Court. On making the award under Section 11, Collector shall tender payment of compensation awarded by him to the persons interested and entitled thereto according the award and shall pay it to them unless prevented by one or more of the contingencies mentioned in the next sub-section. We are not referring to sub-section, but suffice it to say that duty is cast on the Collector to make payment on making the award. Section 32 refers to investment of money deposited in respect of the lands belonging to persons incompetent to alienate. Section 33 refers to investment of money deposited in other cases. Section 34 refers to payment of interest. It is required to be noted that Proviso to Section 34 refers to the amount of such compensation if not paid, meaning thereby, the amount of compensation as awarded under the Land Acquisition Act. If any amount is required to be paid dehors the Act, there is no question of issuing any direction to make payment.

#. Section 28 refers to payment of interest. The said section reads as under.

"28. Collector may be directed to pay interest on excess compensation. If the sum which, in the opinion of the Court the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to

the date of payment of such excess into Court.

Provided that the award of the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry."

#. Learned advocate for the petitioners submitted that in the instant case, there is no question of making request for interest under Section 28, but the request is to pay interest under Section 34 of the Act. On the plain reading of Section 28, it is clear that the interest is payable from the date on which the Collector takes possession. Thus, when he takes possession under the provisions of the Act, interest is to be paid. However, if by private negotiations or otherwise possession is taken by a person in anticipation of valid acquisition proceedings, then the question would be whether the amount of interest is payable under the Act or not. In view of anticipation of proceedings, the person anticipating the acquisition proceedings in his favour, considering likely delay or the requisite and reasonable time likely to take, may make private arrangement and the beneficiary may take possession of the lands. Such possession cannot be said to have been taken under the provisions of the Act, unless, the Collector has taken possession in colourable exercise of powers under the Act. The possession before issuance of notification under Section 4 of the Act or before making an award is taken by Special Land Acquisition Officer under the Act is one thing and the possession parted with by claimants in anticipation of rent or interest from the persons likely to acquire the land is another thing. Latter can not be compared with possession taken by the Special Land Acquisition Officer. Before notification under Section 4 of the Act if possession is parted with not under the Act, one would be entitled to claim rent as agreed.

#. Learned advocate for the petitioners submitted that in view of the Division Bench judgment of this High Court in the case of Ramjibhai Kalubhai v. State of Gujarat, in Special Civil Application No. 8612 of 1999, decided on 28.12.99 these petitions should be allowed and the respondents should be directed to pay the rent/interest

as prayed for. In that case, the possession was taken on 30.9.77. Notification was issued under Section 4 of the Act, on 16.1.97. The petitioners made a grievance that possession was taken way back on 30.9.77 and award made it clear that the petitioners were entitled to the amount of rent from the date of possession is taken over, yet till the date of payment of compensation, no amount of rent whatsoever had been paid although the petitioners stood deprived of their land on 30/9/77 itself. In the instant case, what Land Acquisition Officer has stated in the award is that the possession has been taken over by the acquiring body under the private negotiations directly and therefore, either as per the agreement or the conditions as agreed amount of interest or amount of rent is required to be paid directly by the acquiring body. In the instant case, there is no decision rendered by the Land Acquisition Officer that the petitioners are entitled to the amount of rent from the State from the date of possession. As possession was handed over by claimants in view of private negotiations, award specifically refers that aspect. When possession was handed over, even proceedings were not in contemplation.

#. Learned advocate for the petitioner further submitted that in another decision of this High Court in the case of Keshavbhai Khodidas Patel v. State of Gujarat in Special Civil Application No. 2156/2000, the Division Bench had an occasion to consider a similar case. In that award also, it was specifically mentioned that the claimants are entitled to claim interest from the date of taking over possession i.e. May 20, 1970 til the date of the award and the amount of interest is to be paid by the acquiring body directly to the claimants.

#. Thus, in both the cases, the Land Acquisition Officer rendered his decision about the entitlement of the rent/interest. While in the instant case, as pointed out earlier, it is clear that it is not so, but on the contrary, the award makes it clear that the acquiring body has to make the payment as agreed directly with claimants. That apart, the Division Bench in the case of Mavjibhai Ramjibhai v. State of Gujarat in Special Civil Application No. 7892/00 had an occasion to consider similar facts namely, taking possession of the land before the issuance of notification under Section 4 of the Act. There, request was made to declare that the petitioner is entitled to interest under Section 28 of the Act. The Division Bench pointed out as under.

"The Act is a complete Code in itself in the matters relating to acquisition of lands.

> Interest under Section 28 of the Act can be granted only on fulfillment of certain conditions mentioned therein and not dehors the provisions of the said section.There is alternative forum under the statute before which such a claim can be laid."

The Court further pointed out that in view of the scheme of the Act, relief claimed in the petition cannot be granted and such relief can be claimed by the petitioner only before the Reference Court.

##. So far as Section 34 of the Act is concerned, it refers to the payment of interest. The amount of compensation is required to be determined and such amount is to be paid or to be deposited on or before taking possession of the land. Thus, reading Section 34 it is clear that if amount of compensation as awarded is not paid or deposited before taking possession of the land by the Collector then, the Collector shall pay the compensation awarded with interest thereon at the rate of 9% per annum from the time of taking possession until it shall have been so paid or deposited. However, if the amount is not paid within a period of one year, the amount is required to be paid at the rate of fifteen per centum per annum for the period after one year. Therefore, Section 34 refers to payment of interest on the amount of compensation awarded if not paid before taking possession by Collector.

##. The amount of compensation is to be determined on the basis of the market price as prevailing on the date of notification under Section 4 of the Act. The relevant date for fixing the market price is the date of notification. If award is made just before expiry of two years as contemplated in Section 11A and on making award possession is to be taken, then either amount is to be paid before taking possession or amount is to be paid with interest when possession is taken without tendering the amount. If possession is taken before making an award but after issuance of notification under Section 4 of the Act by the Collector, it can be said that possession is taken by the Collector contemplating further proceedings under the Act. But when the person not exercising the powers under the Act or having no authority to exercise the powers under the Act by private arrangement takes the possession, such possession can not be said to have been taken under the Act. Such possession taken by negotiation is not under the Act, but dehors the Act. Parting of possession under an agreement does not mean taking possession under the Act by the

Collector. Therefore, one would be entitled to claim damages, if he is dispossessed without following the procedure laid down under the law. If possession is handed over by private negotiation or an agreement then one may have to take steps to enforce that agreement. If possession is taken before 2 years from the date of notification published under Section 4 of the Act and price is claimed of that date, things would be different, but, if one is claiming the price of subsequent date, obviously it would be approximately 20% more, if there is two years' duration.

##. If the notification under Section 4 of the Act is published in 1998 and market price is determined at Rs. 100/- per sq. mt. in a given example which is hypothetical, it would be clear that it could never have been intended to offer more than the legitimate amount. If possession of the land is taken in 1996, for which example is given and amount is paid in 2000, then considering 9% for first year and for subsequent period at 15%, one would get Rs. 100 + 54 = Rs.154/- as claimed presently. Considering 10% increase or decrease every year as the case may be, then price of the land in 1996 would be Rs. 80/- per sq. mt. If that price is considered then in the year 2000, one will have to pay Rs. 80/- + 43.20 = Rs. 123.20 ps. considering the rate of interest @ 9% and 15% for the first year and for subsequent period. Thus, one will have benefit of Rs. 30.80 if the possession of land was taken 2 years prior to the notification under Section 4 of the Act and if the amount is paid 2 years after the notification (of course on determination of market price). Thus, one will have double advantage of higher price and interest on the higher price. The difference comes to 31%. One would be entitled, in a given case, to rent/damages for two years and after the date of notification, one will be entitled to get interest till the payment as contemplated. The Reference Court will have to determine the amount of rent on the basis of reasonable return or other comparable instances for the period i.e. taking possession upto the date of notification under section 4 of the Act. As the price is to be determined on the date of notification under Section 4 of the Act and one is dispossessed from that date, one will have to pay interest as and when the price is determined from the date of notification. This would not cause prejudice to either side. Reading the language of Section 34 also it is clear that it has reference to such compensation i.e. compensation to be determined on the basis of market price prevailing on the date of notification. It has reference to compensation payable under the Act only.

##. In the present case, market price as on 7th April, 1997 was required to be determined being the date of notification under Section 4 of the Act and not as on 7.4.1987, the date on which in view of private negotiation possession was handed over to the beneficiary. There is a difference of 10 years. The claimants are claiming market rate of 7.4.1997 and interest with effect from 1.4.1987 on price of 7.4.1997. Considering the difference of 10% for one year in the year 1987 market value must not be more than Rs. 3.40 ps. per sq. mt. Thus, the claim of the price of Rs.9/per sq. mt. instead of Rs. 3.40 per sq. mt. and the claim of interest not on Rs. 3.40 per sq. mt. but on Rs. 9/- per sq. mt. is outside the scope of the Act, particularly when possession is not taken under any of the provisions of the Act.

##. In the instant case, learned advocate has stated that irrespective of the finding recorded by the Land Acquisition Officer as petitioners were dispossessed earlier, they should be paid compensation. This is a question of fact. What amount of compensation is to be paid is required to be determined. In view of the fact that one Division Bench of this Court has taken the view that dehors the Act, relief cannot be granted, in our opinion, the other view is not possible. It was orally agreed between acquiring body i.e. beneficiary and the claimants that the compensation i.e. rent/interest would be paid at the prevalent market price of the land at the time of payment. It is contended by beneficiary that as claimants are to be compensated at a higher rate than existing at the time of taking possession nothing is payable. That cannot be accepted. As the lands belonged to the claimants, till lands vest in beneficiary, the claimants cannot be deprived of the benefit which they would have got. Therefore, it is absolutely necessary to pay just and fair compensation that can be determined on the basis of evidence. What rent could have been fetched will have to be determined from the date of possession till the date of notification under Section 4 of the Act. Thus, when the compensation is to be paid at the prevalent market price of the land on the date of publication of notification, the question of paying rent based on the price of the acquired land at the time of taking possession of the land would arise. This is stated on oath and the parties will require to lead evidence even on this aspect. Therefore, on what terms, the parcels of lands were handed over cannot be gone into in view of these pleadings. We are of the view that the amount of interest can be claimed on the compensation as

specifically mentioned in Section 34 and not dehors the provisions of the said Section. If the possession is not taken by the Collector in view of an agreement between the beneficiary and the claimants, then amount to be claimed for the period from giving possession till the date of notification under Section 4 of the Act as agreed. The petitioners, for claim of damages/interest/rent, can approach the Reference Court as pointed out by Division Bench in Special Civil Application No. 7892 of 2000 decided on 20.9.2000. For fixing the interest/rent of the property, the Court will have to examine the evidence that may be produced before it by the parties. The claim is disputed before the court. Therefore, it would be just and proper not to entertain the petitions and the parties are asked to approach the appropriate court. Before the Reference Court in the pending references, demand may be raised by the petitioners and the Reference Court shall decide the question on evidence about interest/rent for the period from the date of taking possession and the date notification under Section 4 of the Act. The petitions, thus, having no merits are required to be dismissed with costs.

[B.C. PATEL, J.] [SHARAD D. DAVE, J.]

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